

2. Shri J. D. Gupta, IAS,  
Estate Officer-cum-  
Deputy Commissioner,  
Chandigarh
3. Shri B.K. Uppal, HSE-I,  
Addl. Chief Engineer Projects,  
Haryana, Chandigarh.
4. Shri M.G. Gupta, I.A.&A.S.,  
Senior Deputy Accountant-General,  
Haryana, Chandigarh.
5. Dr. P.R. Sondhi,  
Director of Health Services,  
Haryana, Chandigarh.
6. Shri Rattan Singh Dayal,  
Director of Animal Husbandry,  
Haryana, Chandigarh.

H. K. JAIN,

Deputy Secretary to Government, Haryana,  
Finance Department and Director of  
Lotteries, Haryana.

#### LABOUR DEPARTMENT

The 30th June, 1972

No. 7213-4Lab-72/28562.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Om Weaving Factory, Bahalgarh (Sonapat).

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 41 of 1971

*between*

SHRI RAM KISHAN, C/O BAHADURGARH POTTERIES AND GENERAL LABOUR UNION,  
BAHADURGARH AND THE MANAGEMENT OF M/S OM WEAVING FACTORY, BAHALGARH  
(SONEPAT)

*Present:*

Shri C.B. Kaushik and Rajinder Singh for the applicant.  
Shri R.C. Sharma, for the management.

#### AWARD

Shri Ram Kishan was working as an electrician in the respondent concern. He claims that his services were wrongly terminated with effect from 13th October, 1970. This gave rise to an industrial dispute. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute to the Labour Court, Rohtak for adjudication,—vide Government Gazette Notification No. ID/RK/184-A-70/8872-76, dated 25th February, 1971:—

“Whether the termination of services of Shri Ram Kishan was justified and in order ? If not, to what relief is he entitled ?”

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. The plea of the management is that on 12th October, 1970 the workman Shri Ram Kishan committed theft by taking away a bundle of electric wire. Accordingly a charge-sheet was given to him on the next day i.e. 13th October, 1970. It is alleged

that he accepted the charge-sheet but refused to sign an acknowledgement of having received the charge-sheet and also did not attend on the date fixed for the inquiry. So an *ex parte* inquiry was held against him in which his guilt was satisfactorily established and his services were, therefore, rightly terminated on 20th October, 1970.

The only issue which arose from the pleadings of the parties was precisely the same as in the order of reference. The parties were directed to produce evidence in support of their respective submissions. On 16th June, 1971 the management produced their partner Shri Ved Parkash who proved the record of the inquiry marked Exhibit M.W.1/3. The Inquiry Officer Shri Munshi Ram is said to have died. Shri Ved Parkash has also stated that charge-sheet marked Exhibit M.W. 1/1 was received by the workman but he refused to sign an acknowledgement. So a report regarding this refusal was made which is marked Exhibit M.W. 1/2. Shri Mohinder Sain, Typist who actually gave the charge-sheet to the workman has also been examined and he has also stated that the workman refused to give an acknowledgement of the copy of the charge-sheet which he had received and so he made the report marked Exhibit M.W. 1/2 which was duly attested by the Chowkidar and the Security Officer. The management then closed their evidence and the case was adjourned to 29th July, 1971 for the evidence of the workman. After seeking a number of adjournments the workman completed his evidence on 29th October, 1971. Because of over-work final orders could not be dictated and in the meantime the Industrial Disputes Act was amended and section 11-A was added. The proviso to this newly added section prohibits the Labour Court, Tribunal or National Tribunal from recording any fresh evidence in cases relating to the discharge and dismissal of the workman. Previously the law as laid down by the Punjab and Haryana High Court was that in cases where a domestic inquiry is held by the management before terminating the services of a workman, the management is entitled to rely upon the inquiry in the first instance and the court acquired jurisdiction to deal with the merits of the case only if it came to the conclusion that the dismissal of the workman could not be upheld on the basis of the domestic inquiry held by the management and thereafter the management have a right to give evidence on merits of the charges and the court is bound to give an opportunity for this purpose. A doubt arose as to whether this procedure was still to be followed after the Parliament had amended the Industrial Disputes Act. An opportunity was, therefore, given to the parties to address arguments on this point. After the arguments had been heard it was brought to the notice of the court that their Lordships of the Supreme Court have been pleased to lay down that the management could reserve their right to produce evidence on merits, if the inquiry held by them is found to be vitiated, only if a request to this effect is made by them by means of an application before the trial is concluded. The perusal of the file showed that no such application had been made by the management till then and so the question as to whether the management had or had no right to produce any fresh evidence on merits did not arise and the case was fixed for arguments again for 6th June, 1972. On the date fixed the management made a request that they wanted to produce the attesting witnesses of the report of Shri Mohinder Sain, Typist that the workman had refused to give an acknowledgement for the charge-sheet which had been received by him. This request was accepted and an opportunity was given to the management to produce further evidence as desired by them. It appears that on 6th June, 1972 it dawned upon the management to give an application that they wanted to reserve their right to produce evidence on merits if the domestic inquiry is held to be vitiated. Further evidence of the management was recorded on 20th June, 1972 and the arguments of the learned representatives of the parties were heard.

After carefully considering the evidence produced by the parties I am of the opinion that the management were not justified in conducting an inquiry against the workman *ex parte*. The evidence of Shri Tuhi Ram, Security Officer which was recorded on 20th June, 1972 is to the effect that on the evening of 12th October, 1970 Shri Ved Parkash Partner had directed him that the workman Shri Ram Kishan was not to be allowed to enter the factory and these orders were duly conveyed to the Chowkidar. Shri Tuhi Rai says that in compliance to these orders the Chowkidar did not permit Shri Ram Kishan to enter the factory when he reported for duty on the next day i.e. 13th October, 1970 in the morning and told him to come again between 10 to 11 A.M. Shri Tuhi Ram states that when the workman came again the charge-sheet marked Exhibit M.W. 1/1 was given to him by the Typist Mohinder Sain but the workman refused to give an acknowledgement of having received the charge-sheet and went away and so the report marked Exhibit M.W. 1/2 was made which was attested by him and the Chowkidar.

It is clear from this evidence that it must have come to the notice of the management on 13th October, 1970 that the intentions of the workman Shri Ram Kishan were not good because he had refused to give an acknowledgement although he had received the charge sheet and, therefore, he could be expected to deny the receipt of the charge-sheet and also express ignorance of the time and date fixed for the purpose of holding the inquiry. Still the management did not take the ordinary precaution of sending the notice to the workman under registered cover acknowledging him that his conduct of receiving the charge-sheet but refusing to give an acknowledgement for the same was not correct. Ordinary prudence also required that the management should have enclosed another copy of the charge-sheet with the registered notice and should have also informed him of the time and date fixed for the inquiry but it appears that the management were in a desperate haste to conclude the inquiry and though they knew that they had no independent evidence of the fact that the workman had refused to give an acknowledgement for having received the charge-sheet or of the date and time fixed for the inquiry yet they proceeded *ex parte* against the workman on 15th October, 1970.

The case as put up by the workman in his notice of demands as also in the claim statement is that his services were terminated on 13th October, 1970. This means that after the workman was not permitted to enter the factory he had no further knowledge as to what had been done by the management. At this stage it would not be out of place to point out that although an opportunity was given to the management to produce the attesting witnesses of the report marked Exhibit M.W. 1/2, the management only produced one attesting witness i.e. Shri Tuhi Ram, Security Officer. The other alleged attesting witness namely Shri Chander Singh has not been produced. On the other hand the workman has produced one Shri Chander Singh who claims that in October, 1970 he was working as a Chowkidar and he was directed not to permit the workman Shri Ram Kishan to enter the gate. He says that

the workman was never given any charge-sheet. Shri Mahavir Parshad a co-worker also says that no notice was put up on the notice board regarding the charge-sheet or the time and date fixed for the inquiry. The workman has also appeared as a witness in support of his case and from his cross-examination it can not be said that his evidence is proved to be false. In view of all these circumstances I am of the opinion that the dismissal of the workman cannot be up-held on the basis of the *ex parte* inquiry held against him.

As regards the right of the management to produce evidence on merits I am of the opinion that even under the law as it existed before the addition of section 11-A in the Industrial Disputes Act, the management had no right to produce evidence on merits without specifically reserving their right to do so because it has been laid down by their Lordships of the Supreme Court in the Delhi Cloth and General Mills case reported in 1972-Lab-IC-573 that if the management wants to avail itself of the right that it has in law, of adducing additional evidence it has either to adduce evidence simultaneously with its reliance on domestic inquiry or should ask the tribunal to consider the validity of the domestic inquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. It has been held that whether the management filed an application seeking permission to adduce evidence only after the judgement was reserved it must be held that the application was highly belated. In the present case as already pointed out the evidence of the parties was concluded as early as on 29th October, 1971 and at the request of the management the case was re-opened and only then the management considered it proper to make an application that if the inquiry is found to be defective the management be given a chance to produce further evidence on merits. In this application the management have taken up a definite stand that at this stage they did not wish to produce any evidence on merits. In my opinion as held by the Lordship of Supreme Court, this application is highly belated and even if it is held that the provisions of section 11-A of the Industrial Disputes Act prohibiting fresh evidence do not apply to the pending cases and the management have a right to produce evidence on merits, the application for permission to produce evidence on merits which has been given at such a late stage must be rejected. In my opinion therefore, the workman is entitled to be reinstated with continuity of service.

As regards back wages I am of the opinion that the management initially closed their evidence on 16th June, 1971 and then the workman dragged on the proceedings and took as many as four adjournment for producing his evidence. Thereafter the disposal of the case was delayed because of the legal question which required decision as to whether the management were entitled to produce evidence on merits. The management can not be blamed for all this delay in the disposal of the case and it would be unfair to burden them with full back wages. In my opinion the management are only liable to pay back wages from the date of the wrongful termination which was 20th October, 1970 up to the month of June, 1971 when they initially closed their evidence. This means the management would pay only back wages for eight months. I give my award accordingly. No order as to costs.

P. N. THUKRAL,  
Presiding Officer,

Dated 23rd June, 1972.

Labour Court, Haryana, Rohtak.

No. 1191, dated 24th June, 1972

Forwarded (4 copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

B. L. AHUJA, Commissioner  
for Labour and Employment & Secy.

#### LABOUR AND EMPLOYMENT DEPARTMENT

The 28th June, 1972

No. 7017-1Lab-72/28403.—The Governor of Haryana is pleased to make the following appointment and posting :—

Serial No.	Name of Officer	Appointed and posted as	With effect from	Remarks
1	Kumari Kusum Sharma	Assistant Employment Officer, (V. G.), Sub-Regional Employment Exchange, Rohtak	The 14th June, 1972 (forenoon)	On a purely temporary basis against an existing vacancy